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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/816,314	03/23/2001	Anthony Frank Menninger	41556/04730 (RS11P076)	8601

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FOLEY AND LARDNER
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3000 K STREET NW
WASHINGTON, DC 20007

EXAMINER


ZEENDER, FLORIAN M

ART UNIT	PAPER NUMBER
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3627

DATE MAILED: 08/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/816,314	Applicant(s) MENNINGER, ANTHONY FRANK	
	Examiner F. Ryan Zeender	Art Unit 3627	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 March 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 July 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>090701, 102102, 01.</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

Claims 3, 9, and 15 are objected to because of the following informalities: The terminology, "utilizing on an association" is confusing/incorrect language. It appears the terminology should be changed to –utilizing an association--. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 7-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 7 and all claims dependent therefrom recite limitations comprising only logic. Since "logic" does not comprise any physical element, the use of the terminology, "A system" appears to be misdescriptive.

Claim Rejections - 35 USC §101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-18, as best understood, are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The basis of this rejection is set forth in a two-prong test of:

- (1) whether the invention is within the technological arts; and
- (2) whether the invention produces a useful, concrete, and tangible result.

For a claimed invention to be statutory, the claimed invention must be within the technological arts. Mere ideas in the abstract (i.e., abstract idea, law of nature, natural phenomena) that do not apply, involve, use, or advance the technological arts fail to promote the "progress of science and the useful arts" (i.e., the physical sciences as opposed to social sciences, for example) and therefore are found to be non-statutory subject matter. For a process claim, the recited process must somehow apply, involve, use, or advance the technological arts.

In the present case, claims 1-12 only recite an abstract idea. The recited steps/logic of merely defining a plurality of items, selecting a supplier site, and determining a distribution center do not necessarily apply, involve, use, or advance the technological arts since all of the recited steps/logic can be performed in the mind of the user or by use of a pencil and paper. These steps only constitute an idea of how to create cost system components in a supply chain.

Additionally, for a claimed invention to be statutory, the claimed invention must produce a useful, concrete, and tangible result. In the present case, claims 1-18 do **not** appear to produce a tangible result.

Therefore, because the recited process/system/program does not produce a useful, concrete, and tangible result and the process/system of claims 1-12 is not within the technological arts as explained above, claims 1-18 are deemed to be directed to non-statutory subject matter.

Claim Rejections - 35 USC § 103

Claims 1-18, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Duffy et al. US2003/0212610A1 in view of Shavit et al.

Duffy et al. disclose or inherently teach all of the limitations of the claims (see for example paragraphs 0070-0073, 0081, 0088, 0119, 0088, and 0131) but lacks the specific teaching of determining a distribution **center**.

Shavit et al. teach a similar supply chain management method/system whereby distribution centers are determined (See for example Shavit et al. Col. 12, line 42 through Col. 13, line 50).

It would have been obvious to one of ordinary skill in the art to modify Duffy et al. to determine a distribution center, in view of Shavit et al., in order to provide the user with the best "choice" for distribution of goods (See Shavit et al., Col. 12, lines 54-65).

Relevant Prior Art

The assignee, Restaurant Services Inc. (RSI), launched a product (RSI/Link) "to collect sales, shipment, pricing, and inventory information from Burger King's 350 suppliers and distributors" (See "A Whopping Inventory Task") in 1994.

The article "Burger King Orders AT&T Mail Service" discusses how "the E-mail network will replace a manual, paper-based tracking and ordering system."

The Examiner requests that the applicant provide the Office with any known information relevant to the above mentioned product launch.

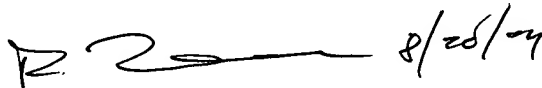
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to F. Ryan Zeender whose telephone number is (703) 308-8351. The examiner can normally be reached on Monday-Friday, 8am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bob Olszewski can be reached on (703) 308-5183. The receptionist's phone number for the Technology center is (703) 308-1113.

The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9326 for before-final communications.

F. Zeender
Primary Examiner, A.U. 3627
August 20, 2004

Handwritten signature of F. Ryan Zeender, dated 8/20/04.

**F. RYAN ZEENDER
PRIMARY EXAMINER**